

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

REX FOREMAN

Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2014-SW-10

TO: Rex Foreman
Foreman Tire Service, Inc.
102 3rd Avenue,
Alton, IA 51003

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Rex Foreman for the purpose of resolving violations related to the illegal stockpiling of waste tires. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryon Whiting, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand
Spencer IA 51301-2200
Phone: 712-262-4177

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455D.23, which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D and any rule adopted pursuant to this chapter; and Iowa Code sections 455D.22 and 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Rex Foreman**

III. STATEMENT OF FACTS

1. Rex Foreman is the owner of Foreman Tire Service and Performance Tire in Le Mars, Iowa. Foreman Tire Service, Inc. is located at 102 3rd Avenue in Alton, Iowa. Foreman Tire Service and Performance Tire are engaged in the business of selling and mounting new and used tires. Rex Foreman also is the owner of a property located in the 800 block of East Division Street in Alton where waste tires have been illegally stockpiled and disposed of. The East Division Street property is a 10.42 acre parcel designated by the Sioux County Assessor as parcel # 23-11-201-004.

2. Rex Foreman has a history of noncompliance with Iowa law related to the storage and disposal of waste tires at the East Division Street property in Alton. In the 1990's, Rex Foreman accumulated a waste tire stockpile which was eventually determined to contain approximately 94,500 waste tire equivalents or 945 tons of waste tires. The pile was abated pursuant to a Letter of Agreement between the DNR and Rex Foreman executed on August 10, 2000. Pursuant to the Letter of Agreement, Rex Foreman contributed \$7,500 toward the \$142,708 state-funded clean-up of the waste tires. The abatement project was completed in July of 2001.

3. Pursuant to the terms of the Letter of Agreement, Rex Foreman is prohibited from storing more than 500 passenger tire equivalents of waste tires at the East Division Street property and may only store reusable, saleable, repairable, or new tires in a designated storage area of 100' by 150' at the north end of the property. Iowa law prohibits the storage of more than 500 waste tires without a permit.

4. The DNR documented violations of the storage and disposal limitations of Iowa law and the Letter of Agreement on September 21, 2006, October 12, 2006, July 17, 2007 and October 9, 2007. Notices of Violation were issued to Rex Foreman in regard to these violations.

5. On September 29, 2011, the DNR received a complaint alleging that Rex Foreman was in violation of applicable tire storage requirements. The complaint was investigated on October 27, 2011. At that time, Rex Foreman acknowledged that he had recently removed a large number of tires from the site. The complaint appeared to have been addressed at the time of the investigation.

6. On October 24, 2013, the DNR received a complaint alleging that Rex Foreman was storing thousands of tires at the East Division Street property in Alton, Iowa. The complaint was investigated on November 7, 2013. At that time it was confirmed that Rex Foreman was in violation of the tire storage requirements of Iowa law and also in violation of the Letter of Agreement. A Notice of Violation was issued on December 20, 2013.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Rex Foreman**

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455D.11(4) provides that the DNR shall develop rules for waste tire stockpiling facilities. Iowa Code section 455D.11(5) provides that the DNR shall issue permits to qualified stockpiling facilities. Pursuant to section 455D.7, the Environmental Protection Commission (Commission) shall adopt rules necessary to implement chapter 455D. The Commission has adopted 567 IAC chapter 117 relating to the management of waste tires.

2. Pursuant to Iowa Code section 455D.11B and 567 IAC 117.4(1)“a”, an owner or operator of a waste tire collection site shall obtain a permit from the DNR prior to operation of the site. Pursuant to Iowa Code section 455D.11(1)(d), a “tire collector” includes a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires. The facts set forth above establish violations of these provisions.

3. Pursuant to 567 IAC 117.2, “passenger tire equivalent” means a conversion measurement that is used to estimate waste tire weights and volume amounts and in which one passenger car tire with a rim diameter of 17 inches or less is equal to 20 pounds. One cubic yard of volume shall contain 15 passenger tire equivalents. Tires larger than a passenger car tire shall be evaluated for volume using this conversion measurement. Pursuant to 567 IAC 117.4(1) “a”, no business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile. A business may temporarily store up to 1,500 passenger tire equivalents in a mobile container, truck or trailer service by a registered waste tire hauler for a period of up to 60 days. The facts set forth above establish violations of these provisions.

4. Pursuant to 567 IAC 117.5, used tires shall be stored in a manner that provides for the prevention of the collection of water, dirt, or debris within the tire; organized through stacking, rows, and sorting which provides for accurate descriptions and counts of the types and sizes of tires stored; and storage shall conform to applicable local and state fire codes. Furthermore, pursuant to 117.5(2) used tires stored for more than one year without documentation of active resale or reuse of tire inventory in a proportion equal to 75 percent of the amount stored shall be considered waste tires and shall be subject to the applicable waste tire storage and disposal rules of this chapter. The facts set forth above establish violations of one or more of the provisions of rule 117.5.

5. Pursuant to the Letter of Agreement executed between the DNR and Rex Foreman on August 10, 2000, Rex Foreman is prohibited from storing more than 500 passenger tire equivalents and may only store reusable, saleable, repairable, or new tires in a specified storage area on his property. The facts set forth above establish violations of the Letter of Agreement.

6. Pursuant to Paragraph I of the Letter of Agreement, in the event of the violation of any condition of the Letter of Agreement, the DNR may seek recovery of all expenses incurred during abatement operations. In this case the abatement costs total \$142,708. The

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Rex Foreman**

state funded portion is \$135,208. By execution of this administrative consent order, the DNR agrees not to seek full reimbursement based upon those violations documented herein. The DNR may seek full reimbursement if future violations of the Letter of Agreement occur.

V. ORDER

THEREFORE, the DNR orders and Rex Foreman agrees to the following:

1. On or before July 15, 2014, Rex Foreman shall separate all waste tires from tires held for resale. Every tire held for resale shall be clearly marked with the month and year that the tire was placed on the property. Resale tires shall be organized by size or type and stacked in a manner that allows for easy recovery and sale. All such resale tires are required by law to be marked with the month and year the tire was placed on the property beginning at the time of acceptance and continuously until the tire leaves the site.

2. On or before July 15, 2014, Rex Foreman shall reduce the number of waste tires stored on the ground at any property under his ownership or control to less than 500 passenger tire equivalents and shall have no more than an additional 1,500 passenger tire equivalents stored for up to 60 days in a truck, trailer, or other container.

3. On or before August 15, 2014, Rex Foreman shall propose to the DNR a location for the storage of resale and waste tires on his property or properties. If the proposal differs from the, the 100' by 150' area on the property in the 800 block of East Division Street in Alton, Iowa (Sioux County Assessor parcel # 23-11-201-004) which was designated for tire storage by the Letter of Agreement executed between the DNR and Rex Foreman on August 10, 2000 then the DNR shall have a right to review and approve or disapprove the proposed location.

4. If Rex Foreman complies with paragraphs 1 through 3 of this Section V then the DNR agrees to amend the Letter of Agreement to authorize waste tire storage and resale tire storage as established in paragraphs 1 through 3.

5. Beginning August 15, 2014 and continuing to the time of any amendment of the Letter of Agreement, Rex Foreman shall pay a stipulated penalty of \$500 per day of violation for any violation of Paragraphs 1 or 2 of this Section V. From the date of any amendment to the Letter of Agreement, Rex Foreman shall pay a stipulated penalty of \$100 per day for any violation of the Letter of Agreement. If the Letter of Agreement is amended, such amendment shall include this stipulated penalty.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Rex Foreman**

VI. PENALTY

1. Iowa Code section 455D.25 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the waste tire stockpiling violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties. The administrative penalty is determined as follows:

Economic Benefit – Rex Foreman has achieved an economic benefit from the violations documented herein. The excess stockpiling of waste tires results in delayed compliance costs related to time, labor and disposal fees. Waste tire disposal costs in Iowa are generally in excess of \$1.00 per waste tire. The benefit of the delay in costs is minimal. The stipulated penalties contained herein have been calculated with consideration of this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal stockpiling of waste tires provides a refuge for mosquitoes and vermin. The stockpiling of waste tires presents a threat of fire which would result in air quality violations and potential groundwater contamination. The stipulated penalties contained herein have been calculated with consideration of this factor.

Culpability – Rex Foreman has been in the business of tire sales and service for many years and has a history of noncompliance. Mr. Foreman is aware of all applicable requirements and has repeatedly failed to comply. Since 2000, all documented violations have been quickly addressed but have eventually recurred. The stipulated penalties contained herein have been calculated with consideration of this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Rex Foreman. For that reason Rex Foreman waives his rights to appeal this administrative consent order or any part thereof.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Rex Foreman**

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455D.25. Compliance with sections V.1-V.3 of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 12th day of
June, 2014.



REX FOREMAN

Dated this 10 day of
JUNE, 2014

Field Office #3; V.I.C;